

USDC SCAN INDEX SHEET



BJR 3/28/00 10:12

3:00-CV-00617 SEVERSON V. VITTO

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\*CMP.\*

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Attorney at Law  
2 402 West Broadway, 13<sup>th</sup> Floor  
San Diego, California 92101  
3 Phone No. (619) 293-3372  
Attorney for Plaintiff,  
4 JOHN SEVERSON

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B. Reed

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7  
8 UNITED STATES DISTRICT COURT FOR THE  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JOHN SEVERSON,  
11 Plaintiff,  
12 v.  
13 KATHERINE VITTO,  
14 Defendant

DOCKET NO.

00 CV 06178TM (LAB)

COMPLAINT FOR DECLARATORY  
RELIEF, EQUITABLE RELIEF AND  
DAMAGES

[JURY DEMANDED]

15  
16 PARTIES, JURISDICTION AND VENUE

17 1. Plaintiff John Severson ("Severson"), at all times herein mentioned, was an individual  
18 residing in and a citizen of the State of California within the City of San Diego.

19 2. Plaintiff is informed and believes, and based thereon alleges, that Defendant Katherine  
20 Vitto ("Vitto"), at all times herein mentioned was, an individual residing in and a citizen of the State  
21 of Michigan.

22 3. This Court has original jurisdiction of this action under 28 U.S.C. § 1332, in that it is a  
23 civil action between citizens of different states in which the matter in controversy exceeds, exclusive  
24 of costs and interest, seventy-five thousand dollars.

25 4. The Certificate of Deposit at issue herein, identified as Account No. 17700019721610  
26 ("the CD account"), was created, maintained and ultimately closed at a branch of Washington Mutual  
27 Bank, F.A. ("Washington Mutual"), located in the County of San Diego within the State of  
28 California.

**FIRST CLAIM FOR DECLARATORY RELIEF**

5. Plaintiff incorporates herein by this reference each and every allegation contained in paragraphs 1 through 4 above as though set forth in full at this point.

6. Plaintiff is informed and believes, and based thereon alleges, that on or about September 28, 1999, Phil Jameson ("Jameson") opened the CD account through a deposit of \$100,000 of his own funds.

7. Plaintiff is informed and believes, and based thereon alleges, that the CD account was established through a written deposit agreement of the same date between Washington Mutual and joint tenants Jameson, Severson and Defendants.

8. Jameson died on November 17, 1999.

9. At the time of Jameson's death, not less than \$100,000 of his own funds was on deposit in the CD account.

10. Plaintiff is informed and believes, and based thereon alleges, that on or about November 30, 1999, Defendants withdrew the entire \$99,981.00 balance on deposit in the CD account.

11. Defendants have failed and refused, and continue to fail and refuse, to tender to Plaintiff the funds on deposit in the CD account at the time of Jameson's death as well as the interest subsequently accruing thereon, despite demand therefor.

12. An actual controversy has arisen as to the true ownership of the funds on deposit in the CD account at the time of Jameson's death, as well as the interest subsequently accruing thereon.

13. Plaintiff therefore requests that the Court adjudicate the parties' respective rights and duties with respect to the funds on deposit in the CD account at the time of Jameson's death, together with the interest subsequently accruing thereon.

14. Such a declaration by the Court is necessary and proper at this time under all the circumstances, due to both Defendants' misappropriation of the funds to their own personal use and the absence of any adequate remedy at law available to Plaintiff.

**SECOND CLAIM FOR RESTITUTION**

15. Plaintiff incorporates herein by this reference each and every allegation contained in paragraphs 1 through 4 and 6 through 14 above as though set forth in full at this point.

1 16. Based on the foregoing, Plaintiff is presently entitled to judgment for restitution by  
2 Defendants of the funds on deposit in the CD account at the time of Jameson's death, together with  
3 the interest subsequently accruing thereon.

4 **THIRD CLAIM FOR IMPOSITION AND ENFORCEMENT**

5 **OF CONSTRUCTIVE TRUST**

6 17. Plaintiff incorporates herein by this reference each and every allegation contained in  
7 paragraphs 1 through 4 and 6 through 14 above as though set forth in full at this point.

8 18. Upon Jameson's death and/or upon Defendants' misappropriation of the funds in the CD  
9 account, a constructive trust arose as a matter of law pursuant to which Defendants became trustees  
10 of these funds for the use and benefit of Plaintiff.

11 **FOURTH CLAIM FOR IMPOSITION AND ENFORCEMENT**

12 **OF RESULTING TRUST**

13 19. Plaintiff incorporates herein by this reference each and every allegation contained in  
14 paragraphs 1 through 4 above as though set forth in full at this point.

15 20. Upon Jameson's death and/or upon Defendants' misappropriation of the funds in the CD  
16 account, a resulting trust arose as a matter of law pursuant to which Defendants became trustees of  
17 these funds for the use and benefit of Plaintiff.

18 **FIFTH CLAIM FOR BREACH OF THIRD-PARTY**

19 **BENEFICIARY CONTRACT**

20 21. Plaintiff incorporates herein by this reference each and every allegation contained in  
21 paragraphs 1 through 4 and 6 through 11 above as though set forth in full at this point.

22 22. Plaintiff was and is an intended third-party beneficiary of the funds on deposit in the CD  
23 account and the interest subsequently accruing thereon, pursuant to the written deposit agreement.

24 23. Defendants have breached that agreement by misappropriating to their own use the funds  
25 at issue, and by failing and refusing to tender such funds to Plaintiff.

**SIXTH CLAIM FOR INTERFERENCE WITH**  
**THIRD-PARTY BENEFICIARY CONTRACT**

24. Plaintiff incorporates herein by this reference each and every allegation contained in paragraphs 1 through 4, 6 through 11 and 22 above as though set forth in full at this point.

25. Defendants have wrongfully interfered with Plaintiff's rights as a third-party beneficiary of the deposit agreement by misappropriating to their own use the funds at issue, and by failing and refusing to tender such funds to Plaintiff.


**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1. For a judicial declaration of the parties' respective rights and duties with respect to the funds on deposit in the CD account at the time of Jameson's death, together with the interest subsequently accruing thereon;
2. For the imposition and enforcement of a constructive trust with respect to such funds;
3. For the imposition and enforcement of a resulting trust with respect to such funds;
4. For damages equivalent to the funds on deposit in the CD account at the time of Jameson's death, together with the interest subsequently accruing thereon, in an amount not less than \$99,981.00;
5. For interest thereon at the maximum rate permitted by law;
6. For recoverable costs of suit; and
7. For such other and further relief as the Court may deem just and proper.

Dated: March 6, 2000

LAW OFFICE OF  
DEB C. PEDERSDOTTER

By:   
DEB C. PEDERSDOTTER  
Attorney for Plaintiff  
JOHN SEVERSON

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

JOHN SEVERSON

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

KATHERINE VITTO

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COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Deb C. Pedersdotter (SBN 131815)  
LAW OFFICE OF DEB C. PEDERSDOTTER  
402 West Broadway, 13th Floor  
San Diego, CA 92101

ATTORNEYS (IF KNOWN)

'00 CV 0617BTM (LAB)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For Diversity Cases Only)  
Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4  
Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY). 28 U.S.C. §1332. Defendant was one of three joint tenants in a bank account. When one of the tenants died, the defendant immediately withdrew all sums and had them transferred to her, without anyone's knowledge or consent. Despite multiple requests, she has refused to return these monies.

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint.  
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE March 10, 2000

SIGNATURE OF ATTORNEY OF RECORD

*Deb C. Pedersdotter*

#58596 \$150-DR